



REPLY

STATE OF MINNESOTA, BY ITS ATTORNEY GENERAL,  
Petitioner,

UNITED STATES OF AMERICA,  
Respondent.

REPLY BRIEF OF THE STATE OF MINNESOTA.

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IN THE  
**Supreme Court of the  
United States**

October Term, 1938

No. 73

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STATE OF MINNESOTA, BY ITS ATTORNEY GENERAL,  
*Petitioner,*

vs.

UNITED STATES OF AMERICA,  
*Respondent.*

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*On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.*

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**REPLY BRIEF OF THE STATE OF MINNESOTA.**

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**STATEMENT.**

Petitioner, State of Minnesota, submits this reply brief for the purpose of calling to the Court's attention material

matters contained in respondent's brief which, if left unchallenged, might tend to confuse and becloud the issues in this important case. Petitioner takes sharp issue with respondent on two major statements or representations contained in respondent's brief in opposition, separately stated herein.

## I.

THE CASE OF UNITED STATES v. COLVARD, 89 F. (2d) 312 (C. C. A. 4th) IS NOT APPLICABLE TO THE INSTANT CASE AS THAT CASE ONLY CONCERNs TRIBAL LANDS.

The Court's attention is first invited to page 4, the last sentence of the first paragraph of the brief of the United States in opposition to the State's petition for writ of certiorari, as follows:

"Accordingly, in United States v. Colvard, 89 F. (2d) 312 (C. C. A. 4th) a decree condemning allotted Indian lands for purposes of a highway, where the permission of the Secretary of the Interior had not first been obtained, was held to give no title."

Petitioner's brief, on pages 30; 31 and 32 thereof, presents a full discussion of that case and definitely points out that the Colvard case concerns the building of a cartway across *tribal lands* and *not lands allotted in severalty to individual Indians*. Allotted Indian lands are the only type of lands concerned with in the instant case.

The Colvard case was not cited in any of the briefs before the Circuit Court but was first mentioned in oral argument by respondent's attorneys, at which time it was represented and stated to the Court that the case involved allotted Indian lands. Apparently the Circuit Court assumed that the Gov-

ernment attorneys were fully cognizant of the facts in the Colvard case for that Court fell in error by assuming that the Colvard case concerned allotted Indian lands. The Circuit Court's opinion with reference thereto states:

"In U. S. v. Colvard, 89 Fed. (2d) 312, that court held that it was not only the right, but the duty of the United States to enjoin individuals from building a highway across lands held by the United States in trust for two Indians." (R. 90)

The State's brief in support of its petition for writ of certiorari fully discusses the Colvard case and expressly points out that the facts of the case relate solely to tribal lands and that case does not in any manner consider the Federal statute pertinent hereto, namely Section 357 (25 U. S. C. A.). Notwithstanding the fact that the Colvard case is not in point, respondent's attorneys still persist that the Colvard case does apply to allotted Indian lands and is applicable. The seriousness of this misrepresentation of fact is obvious.

It is emphasized that the only type of land concerned in this litigation is land allotted in severalty to individual Indians which, under Section 357 (25 U. S. C. A.) may be condemned under State laws for any public purpose. It is further emphasized that there is no express statutory authority granting the right to the State or anyone to condemn Indian tribal lands.

As set forth in the State's petition and brief in support thereof, the State mainly relies upon said Section 357 of 25 U. S. C. A. which expressly authorizes condemnation for public purposes of lands allotted in severalty to individual Indians.

## II.

**THE INTERPRETATION OF SECTION 357 (25 U. S. C. A.) IS OF GREAT IMPORTANCE AND HAS NOT HERETOFORE BEEN CONSTRUED BY ANY FEDERAL COURT.**

The Courts attention is next directed to the Government's brief in opposition, page 6, paragraph 2, the last sentence thereof, reading as follows:

"This decision presents no question of general importance and is not in conflict with that of any other Federal court."

There is no other Federal decision construing or involving the interpretation of Section 357 (25 U. S. C. A.) which grants permission to condemn under State laws for public purposes lands allotted in severalty to individual Indians. Naturally there is no conflict as there is no Federal decision. However, the Circuit Court's decision in the instant case is in direct conflict with the case of Shell Petroleum Corporation vs. Town of Fairfax, 180 Okl. 326, 69 Pac. (2d) 649, which construes said Section 357 of 25 U. S. C. A. and upholds the right to condemn allotted Indian lands. The Shell Petroleum Company case is, therefore, consistent with the Department of Interior's interpretation of said Section 357 as fully discussed in the State's brief.

#### CONCLUSION.

The State argues that the instant case presents a substantial question of general importance, notwithstanding the Respondent's assertions to the contrary. The State has attempted to present fairly to the Court the issues involved and the general importance of this case to every State in the Union wherein are located lands allotted in severalty to in-

dividual Indians. If the Circuit Court decision is upheld, the result will be to disrupt the practice and procedure of over thirty years' standing consistently adopted and followed, both by the Federal Government and the States. It is pointed out that this case affects a major national trunk highway beginning at the border of Canada and traversing the entire breadth of the United States. If the Circuit Court's decision is not reviewed, and is permitted to stand, it will create chaos and confusion and will nullify a great number of eminent domain proceedings hereofore brought and successfully concluded by the State of Minnesota and other States, taking allotted Indian lands for public purposes.

Therefore, it is respectfully submitted that the petition be granted.

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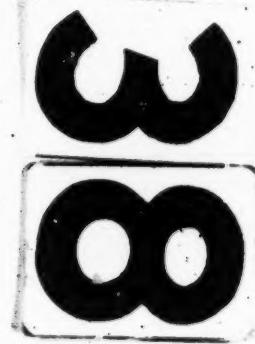
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